

Pratzonberger



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frank A. Barone - Waiver of Erroneous Payment of
Travel Expenses
File: B-229439
Date: May 25, 1988

DIGEST

An employee seeks reimbursement of money collected from him for a travel overpayment. The overpayment was caused by the agency's failure to deduct a travel advance from the amount claimed by the employee at the time of voucher settlement. The employee claims, among other things, that he never received the money. We find no basis to allow the employee's claim based upon the written record, and this Office does not conduct adversary hearings. Further, since the overpayment was made prior to December 28, 1985, the effective date of waiver coverage of travel and transportation expenses, waiver is not available in this case.

DECISION

Mr. Frank A. Barone, an auditor for the Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), appeals the August 28, 1987, settlement of our Claims Group (Z-2864842) denying his request for reimbursement of money collected from him as repayment of an erroneous travel payment. For the reasons stated below, we sustain the action of our Claims Group denying reimbursement of the amount collected. Additionally, waiver under 5 U.S.C. § 5584 is not available in this case, since no authority existed prior to December 28, 1985, to waive erroneous payments of travel expenses.

BACKGROUND

Mr. Barone received a \$100 travel advance for an authorized trip made on December 18 and 19, 1984. On January 4, 1985, he completed a travel voucher for expenses totaling \$116.40. He requested that the \$100 travel advance be applied to the voucher sum and that the remaining \$16.40 be paid to him.

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On January 17, 1985, Mr. Barone's secretary, an HCFA employee designated to pick up imprest funds for the auditors in Mr. Barone's office, submitted Mr. Barone's voucher to the Division of Accounting, Fiscal and Budgeting Services (DAFBS), and received payment. DAFBS records indicate that at this point an error was made and the \$100 advance was not applied to the voucher. Instead, DAFBS contends that Mr. Barone's secretary received \$116.40 in cash which she then gave to Mr. Barone. This error was discovered as the result of an audit of the imprest fund.

The agency notified Mr. Barone of the fact that the advance had not been applied to the amount claimed and he was requested to return the amount representing the outstanding travel advance. Mr. Barone refused to refund the \$100. He contends that he had received only \$16.40 as he had requested, he had not authorized anyone to pick up the money on his behalf, and if an error had been made he was unaware of it and should not be held responsible. He also requested an investigation into the matter by the HHS Office of the Inspector General. An investigation by the Regional Inspector General was conducted but the findings were inconclusive and the case was closed.

The agency instituted collection procedures and reduced Mr. Barone's salary by \$100. The agency based this action on the fact that the imprest fund records, which are subject to many controls, reflected an outstanding debt of \$100 to Mr. Barone and that \$116.40 was paid to his secretary on January 17, 1985.

Mr. Barone then appealed the collection of the \$100 travel advance to our Claims Group. In its August 28, 1987 settlement, our Claims Group denied Mr. Barone's request for reimbursement of the money collected from him. This action was based on the general rule that an employee is responsible for the loss or theft of cash travel advance funds, including situations in which a representative is permitted to receive these funds on the employee's behalf pursuant to departmental practice.

On October 30, 1987, Mr. Barone requested a reconsideration of the Claims Group settlement. He states that the settlement is in error inasmuch as it characterized the funds in question as a lost cash advance rather than an erroneous payment. He reiterates his claim that he never received the \$100 overpayment and he never authorized disbursement or granted authority to the secretary to pick up the money for him. Further, he contends that the investigation into the matter was not conducted properly and he alludes to a possible collusion between the Regional

Office and the Office of the Inspector General to conceal the responsible party.

In its report on the claim, the agency states that the evidence indicates that Mr. Barone did, in fact, receive \$116.40 from his secretary which was paid out pursuant to his filing a travel voucher. The evidence includes the cashier's sworn statement that she distributed the funds in the amount of \$116.40 to the secretary following normal procedures. This was corroborated by annotations on the voucher, which was signed by the secretary, indicating the amount received as \$116.40. This was further corroborated by the secretary's sworn statement that she collected the money and gave it to Mr. Barone.

The agency dismissed Mr. Barone's objections to utilizing a secretary as the traveler's representative for the purpose of submitting vouchers and picking up refunds. The agency states that Mr. Barone knew this was a regular business practice. Mr. Barone had his secretary pick up his refunds both before and after this particular incident took place, as attested to by her signature on other travel vouchers. Further, Mr. Barone had received a copy of the office memorandum dated October 17, 1984, in which certain secretaries were authorized to pick up funds for the listed travelers, and Mr. Barone's name was on the list.

Mr. Barone submitted another letter in response to the agency's report reiterating the claims he made in earlier submissions.

OPINION

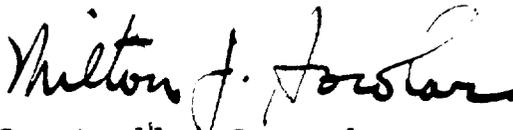
We have examined all the arguments raised by Mr. Barone and find no basis to allow his claim against the government. The burden of proof is on claimants to establish the liability of the United States and the claimant's right to payment. See 4 C.F.R. § 31.7 (1987). Mr. Barone has not met this burden by his mere statement that he never received the money in question. The record clearly demonstrates that the usual office practice and, in fact, Mr. Barone's usual practice, was to send the designated secretary to collect travel refunds. The evidence in the record supports the agency's position that Mr. Barone was in receipt of the \$100 overpayment.

Regarding Mr. Barone's allegations concerning the propriety of the agency's actions in this matter, we note that this Office does not conduct investigations or adversary hearings in adjudicating claims but decides them on the basis of the

written record presented by the parties. Charles M. Kindick, B-187891, June 3, 1977; 4 C.F.R. § 31.7.

Finally, waiver under 5 U.S.C. § 5584 (Supp. III 1985) is not available in this case. Prior to December 28, 1985, waiver consideration was restricted to overpayments of an employee's "pay and allowances." Claims arising from erroneous payments of travel, transportation, and relocation expenses and allowances were excluded. With the enactment of Public Law No. 99-224, December 28, 1985, the waiver authority in 5 U.S.C. § 5584 was extended to include erroneous payments of travel transportation, and relocation expenses and allowances. However, this amendment was not retroactive, so the expanded waiver authority applies only to travel-related overpayments made on or after December 28, 1985. Richard J. Waldman, B-224647, Sept. 28, 1987. As a result, since Mr. Barone's travel costs were paid before December 28, 1985, there is no jurisdiction to consider waiver of the overpayment under 5 U.S.C. § 5584.

In view of the foregoing, we are of the opinion that the agency was correct in collecting the \$100 overpayment from Mr. Barone to which he was not entitled. The disallowance of Mr. Barone's claim by the Claims Group is hereby sustained.



Acting Comptroller General
of the United States